

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Mintz, Levin, Cohn, Ferris, Glovsky,)
and Popeo, P.C.)
)
Petition for Reconsideration of Wireless)
Telecommunications Bureau Clarifies Unified)
Policy for Dismissing and Returning Applications,)
Public Notice, DA 01-3004)

ORDER ON RECONSIDERATION

Adopted: August 15, 2002

Released: August 21, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. On January 23, 2002, Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C. (Mintz) filed a Petition for Reconsideration¹ of a public notice released by the Wireless Telecommunications Bureau (Bureau) on December 26, 2001.² The *Public Notice* clarified the application of the Bureau's unified policy governing the dismissal or return of defective applications in all Wireless Radio Services ("unified policy") with regard to renewal of license applications and construction notifications. For the reasons discussed below, we deny the Petition.

2. *Background.* In the *ULS Report and Order*, the Commission adopted a uniform rule with respect to the dismissal or return of defective applications in all Wireless Radio Services.³ The Commission explained that it "will automatically dismiss any application that is defective because the applicant failed to sign the application, failed to pay the required filing fee, or filed outside of the applicable filing window."⁴ The Commission concluded that, in contrast to minor filing errors, such defects were "fatal to the consideration of the application."⁵ Accordingly, the Commission found that,

¹ Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C., Petition for Reconsideration (filed Jan. 23, 2002) ("Petition").

² Wireless Telecommunications Bureau Clarifies Unified Policy for Dismissing and Returning Applications, *Public Notice*, 17 FCC Rcd 30 (WTB 2001) (*Public Notice*).

³ Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd 21027 (1998) (*ULS Report and Order*) (adopting 47 C.F.R. § 1.934). The Universal Licensing System (ULS) is an interactive licensing system developed by the Bureau to consolidate and replace eleven licensing databases previously used to process applications and grant licenses in the wireless services.

⁴ *Id.* at 21068 ¶ 90.

⁵ *Id.*

regardless of the manner in which the applications were filed, “applications that are unsigned, untimely, or not fee-compliant” will be automatically dismissed.⁶

3. In accordance with the *ULS Report and Order*,⁷ the Bureau announced the implementation of its unified policy on February 24, 1999.⁸ The Bureau stated that, effective May 1, 1999,⁹ it would begin dismissing defective applications and pleadings rather than returning them to the applicants for correction. On June 28, 1999, the Bureau revised its unified policy to reflect its determination to “return for correction, rather than dismiss, timely filed renewal applications and timely filed construction notifications that contain errors.”¹⁰

4. On December 26, 2001, the Bureau clarified the application of its unified policy to renewal applications and construction notifications.¹¹ The Bureau explained that, “[g]enerally, timely filed renewal applications and construction notifications that are otherwise defective will be returned to the applicants for correction, rather than dismissed by the Bureau.”¹² However, the Bureau clarified “that renewal applications and construction notifications that fail to comply with the applicable fee and signature requirements will be dismissed by the Bureau as defective, rather than returned to the applicants for correction, even if timely filed.”¹³ In this regard, the Bureau reiterated the Commission’s mandate in the *ULS Report and Order* regarding automatic dismissal of defective applications that lack either a signature or the required fees.¹⁴ On January 23, 2002, Mintz filed the instant Petition seeking reconsideration of the Bureau’s *Public Notice*.

5. *Discussion.* Mintz¹⁵ argues that we must reconsider the *Public Notice* released on

⁶ See, e.g., *id.*

⁷ On June 28, 1999, the Commission modified the *ULS Report and Order*. See Biennial Regulatory Review – Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission’s Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, 14 FCC Rcd 11476 (1999) (*ULS MO&O*). However, the modifications are not germane to the instant matter.

⁸ See Wireless Telecommunications Bureau Announces Unified Policy for Dismissing and Returning Applications and Dismissing Pleadings Associated with Applications, *Public Notice*, 14 FCC Rcd 5499 (WTB 1999).

⁹ On April 29, 1999, the Bureau released a Public Notice delaying the implementation of the unified policy. See Wireless Telecommunications Bureau Postpones Effective Date of Unified Dismissal Policy for Applications in the Wireless Services, *Public Notice*, 14 FCC Rcd 6923 (WTB 1999). The Bureau stated that the unified policy would take effect for each wireless radio service either on July 1, 1999 or six months after conversion of the specific radio service to the ULS, whichever is later. *Id.*

¹⁰ Wireless Telecommunications Bureau Revises and Begins Phased Implementation of its Unified Policy for Reviewing License Applications and Pleadings, *Public Notice*, 14 FCC Rcd 11182, 11185 (WTB 1999).

¹¹ See *Public Notice*, 17 FCC Rcd at 30.

¹² *Id.*

¹³ *Id.* at 32.

¹⁴ *Id.*

¹⁵ The Commission’s Rules permit any party to a proceeding or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority to seek reconsideration of that action. 47 C.F.R. § 1.106(b). Mintz contends that, pursuant to Section 1.106(b) of the Commission’s Rules, it has (continued....)

December 26, 2001 because our action was both procedurally and substantively flawed. Mintz contends that the Bureau's *Public Notice* actually amended the unified policy, and was not a mere clarification.¹⁶ It argues that the Bureau did not provide an adequate explanation for its change in policy.¹⁷

6. We disagree. The *Public Notice* was indeed a clarification of the Bureau's unified policy and not, as Mintz contends, an amendment of the Bureau's policies. The Bureau issued and subsequently clarified its unified policy pursuant to and in accordance with the rules and policies adopted by the Commission in the *ULS Report and Order*. As noted above, the Commission clearly and unambiguously decided in the *ULS Report and Order* to automatically dismiss any applications that were "unsigned, untimely, or not fee-compliant."¹⁸ The Commission has never reconsidered that decision. Rather, on June 28, 1999, the Commission approvingly cited the Bureau's February 24, 1999 announcement regarding the implementation of its unified policy.¹⁹ Neither the public notice released by the Bureau on that date²⁰ nor the Bureau's subsequent actions concerning the unified policy effected a change in the Commission's determination that an applicant's failure to sign an application or pay the required filing fee was fatal to consideration of the application. It is axiomatic that a delegated authority decision cannot conflict or otherwise reverse the decision of the full Commission.²¹ Against this backdrop, the Bureau's unified policy, as clarified by the *Public Notice*, was consistent with established Commission policy, and to interpret the unified policy as Mintz suggests would be a significant departure therefrom. Consequently, we deny the Petition.

7. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C. on January 23, 2002 IS DENIED.

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standing to seek reconsideration of the *Public Notice* because many of its attorneys are also members of the Federal Communications Bar Association (FCBA), which "participated" in the development of the Bureau's unified policy, and because Mintz, "routinely assists clients in submitting applications for renewal of wireless licenses." Petition at 1. We believe that Mintz's standing to seek reconsideration on its own behalf is open to question. We are aware of, and Mintz has cited, no authority for the propositions that a law firm has standing to seek reconsideration of a Commission action simply because it represents the type of client that could be affected by that action, or because a number of its attorneys are members of an organization that might have had standing to file a reconsideration petition, had it chosen to do so. However, given the public interest in terminating any uncertainty regarding the unified policy, we will address the merits of the Petition.

¹⁶ Petition at 2.

¹⁷ *Id.* at 2-3.

¹⁸ *ULS Report and Order*, 13 FCC Rcd 21068 ¶ 90; *see also* Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, WT Docket No. 98-20, *Notice of Proposed Rulemaking*, 13 FCC Rcd 9672, 9695 ¶ 53 (1998) ("in all cases applications that are submitted without a sufficient fee or . . . do not contain a valid signature will be immediately dismissed.").

¹⁹ *See ULS MO&O*, 14 FCC Rcd 11484 n.33.

²⁰ *See* note 10, *supra*.

²¹ *See, e.g.*, 47 C.F.R. §§ 0.331(a)(2), 1.115(b)(2)(ii); *Advanced Communications Corp., Memorandum Opinion and Order*, 11 FCC Rcd 3399, 3407 n.31 (1995).

8. This action is taken pursuant to delegated authority granted under the provisions of Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau